

## 21 C.J.S. Courts § 261

Corpus Juris Secundum | May 2023 Update

### Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

### VIII. Concurrent and Conflicting Jurisdiction

#### A. Courts of Same State

##### 2. Transfer of Cases

###### a. In General

§ 261. Mandatory or discretionary nature of transfer of cases

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, Courts  483, 484

**Use of the word "shall" in a provision stipulating that if a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court generally demonstrates that transfer of an improperly filed case is mandatory, not discretionary.**

Generally, use of the word "shall" in a provision stipulating that if a proceeding is commenced in an inappropriate court, that court "shall" transfer the cause to an appropriate court demonstrates that transfer of an improperly filed case is mandatory, not discretionary.<sup>1</sup> For example, a chancellor in equity is required to transfer an action seeking damages to an appropriate court of law even where the plaintiff also seeks equitable relief under a constitutional provision stipulating that causes asserting legal claims erroneously brought in equity court "shall" be transferred to a court of law.<sup>2</sup>

On the other hand, in the absence of a mandatory provision, once a court of equity obtains jurisdiction in the case, the equity court has discretion either to transfer the parties to a court of law for adjudication of their law claims or conclude the litigation by giving complete relief.<sup>3</sup> The purpose is to prevent a circuity of action and expense.<sup>4</sup>

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

1

Fla.—[Kawebulum v. Thornhill Estates Homeowners Ass'n, Inc.](#), 755 So. 2d 85 (Fla. 2000).

Miss.—[City of Ridgeland v. Fowler](#), 846 So. 2d 210 (Miss. 2003).

### **Small claims**

The phrase "shall transfer" in the practice book section on transfer from the small claims docket to the regular docket is generally construed as mandatory rather than permissive.

Conn.—[Cannavo Enterprises, Inc. v. Burns](#), 194 Conn. 43, 478 A.2d 601 (1984).

2

Miss.—[City of Ridgeland v. Fowler](#), 846 So. 2d 210 (Miss. 2003).

### **Exorbitant premiums**

Because a suit arising out of the sale of insurance policies and allegedly exorbitant premiums sounds in tort and contract law instead of equity, such suit must be transferred from equity to a court of law even if the plaintiff seeks a constructive trust, an accounting, and injunctive relief.

Miss.—[Union National Life Ins. Co. v. Crosby](#), 870 So. 2d 1175 (Miss. 2004).

3

Va.—[Advanced Marine Enterprises, Inc. v. PRC Inc.](#), 256 Va. 106, 501 S.E.2d 148 (1998).

4

Va.—[Advanced Marine Enterprises, Inc. v. PRC Inc.](#), 256 Va. 106, 501 S.E.2d 148 (1998).

---

End of Document

© 2023 Thomson Reuters. No claim to original U.S.  
Government Works.